

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

THE CLARK CONSTRUCTION GROUP,
INC. and PHIL GREGOIRE
Respondents

Case Nos.: I-02-12264
I-02-12296

FINAL ORDER

I. Introduction

On August 14, 2002, the Government served a Notice of Infraction on Respondents Clark Construction Group, Inc. (“Clark Construction”) and Phil Gregoire, alleging that they violated 20 DCMR 605.1(a)(2), a “fugitive dust” regulation requiring prompt clean-up of any dirt, earth or other material that has been transported from unpaved roads or parking lots. The Notice of Infraction alleged that the violation occurred on August 2, 2002 at 3500 Woodley Road, N.W., and sought a fine of \$200.

Respondents did not file an answer to the Notice of Infraction within the required 20 days after service (15 days plus 5 additional days for service by mail pursuant to D.C. Official Code §§ 2-1802.02(e), 2-1802.05). Accordingly, on September 17, 2002 this administrative court issued an order finding Respondents in default and subject to the statutory penalty of \$200 required by D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f). The order also required the Government to serve a second Notice of Infraction.

The Government served the second Notice of Infraction on September 24, 2002. On October 2, 2002, Respondents filed an untimely answer to the first Notice of Infraction with a plea of Admit and payment of \$200. They also requested suspension or reduction of the penalty for failure to file a timely answer. On October 7, 2002, I issued an order permitting the Government to reply to Respondents' request. The Government has elected not to do so.

II. Summary of the Evidence

Respondents' plea of Admit means that the only issue left for decision is whether a penalty must be imposed for their failure to answer the first Notice of Infraction within 20 days. Respondents argue that the inspector who issued the Notice of Infraction visited their job site on August 2, but did not mail the Notice of Infraction until August 14, and that the Notice of Infraction was sent to Respondent Clark Construction's "main office" instead of the field office at the job site. They further claim that Respondent Phillip Gregoire "was not officially notified of the infraction until September 18, 2002," and that they sent payment seven days later.¹

III. Findings of Fact

Based on the certificate of service, I find that the Government served the first Notice of Infraction upon Respondents by certified mail addressed to 7500 Old Georgetown Road, Bethesda, MD 20814. The same address for Clark Construction appears on the check for the \$200 fine filed with Respondents' plea, and Respondents have admitted that the Notice of

¹ I note that Respondents apparently sent the payment to the wrong address, as their check is addressed to the Department of Consumer and Regulatory Affairs at 614 H Street, N.W., even though the Notice of Infraction form clearly instructs a respondent to send all pleas and payments to this administrative court, located at 825 North Capitol Street, N.E. It is not clear from the record how their payment arrived at the Docket Clerk's office.

Infraction was sent to its main office. I find, therefore, that the Government sent the Notice of Infraction to Clark Construction's main office.

Mr. Gregoire, who is also a Respondent, signed Respondents' request for suspension or reduction of the penalty on Clark Construction letterhead listing an address of 3000 34th Street, N.W., and giving his title as "Superintendent." Although this evidence is sufficient to establish that he is an employee of Clark Construction, the Government has not provided any evidence that Clark Construction's main office in Bethesda is also Mr. Gregoire's last known business address.

IV. Conclusions of Law

The Civil Infractions Act, D.C. Official Code §§ 2-1802.02(f) and 2-1802.05, requires a Respondent to demonstrate "good cause" for failing to answer a Notice of Infraction within 20 days of the date of service by mail. If the Respondent does not make such a showing, the statute requires that a penalty equal to the amount of the proposed fine must be imposed. D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f).

The Civil Infractions Act permits the Government to serve a Respondent by mail at its "last known . . . business address." D.C. Official Code § 2-1802.05. Respondents offer no reason why Clark Construction's main office should not be regarded as its last known business address, and none is apparent. One of the responsibilities of a large corporation doing business at many sites within the District of Columbia is to respond to Notices of Infraction within the statutory deadlines. *See, e.g., DOH v. Amoco Service Station*, OAH No. I-00-10404 at 2 (Order Closing Case, February 21, 2001). The record in this case does not reflect any reason why Clark Construction did not file a timely response after receiving the Notice of Infraction at its main

office. It implies that the appropriate persons at the job site needed to be contacted, but offers no explanation why this could not be done within the statutory 20-day deadline, a deadline that it missed by almost a month.² Thus, Clark Construction has failed to demonstrate good cause for its failure to file a timely response.

The Government, however, has not proved that it served Mr. Gregoire at his last known business address. Because there is no evidence that Mr. Gregoire was properly served, he can not be liable individually for the statutory penalty for failing to respond. *DOH v. Hubbard*, OAH No. I-02-72027 at 4 (Final Order, November 13, 2002).

As noted above, the statutory penalty for failing to file a timely answer is an amount equal to the proposed fine sought in the Notice of Infraction. Violations of any of the provisions of § 605.1(a) are Class 4 infractions. 16 DCMR 3224.5(b). This is Clark Construction's third violation of § 605.1(a) within the three-year period that began on January 1, 2000.³ As a result, the fine for the violation is \$200, 16 DCMR 3201.1(d), and Clark Construction must pay a statutory penalty in that amount.

² I note that Clark Construction has been liable for statutory penalties for failing to file timely answers in at least four previous cases filed against it. *DOH v. Clark Construction*, OAH No. I-00-10032 (Closure Order, February 7, 2002); *DOH v. Clark Construction*, OAH No. I-00-10395 (Closure Order, January 31, 2002); *DOH v. Clark Construction*, OAH No. I-00-11141 (Closure Order, June 29, 2001); *DOH v. Clark Construction*, OAH No. I-00-10114 (Closure Order, May 5, 2000). At this juncture, it should be aware of the deadlines for answering Notices of Infraction and the consequences of failing to comply with those deadlines.

³ Clark Construction has been found liable for violating § 605.1(a) in *DOH v. Clark Construction*, OAH No. I-00-10032 (Closure Order, February 7, 2002) and *DOH v. Clark Construction*, OAH No. I-00-11141 (Closure Order, June 29, 2001).

V. ORDER

Based upon the foregoing findings of fact and conclusions of law, it is, this _____ day of _____, 2003:

ORDERED, that Respondent, Clark Construction Company, shall pay a total of **TWO HUNDRED DOLLARS (\$200)** in accordance with the attached instructions within 20 calendar days of the mailing date of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if Respondent fails to pay the above amount in full within 20 calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1½ % per month or portion thereof, starting from the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ **02/13/03**

John P. Dean
Administrative Judge